

AB-308U

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REMARKS

This is a full and timely response to the non-final Official Action mailed April 28, 2005. Reconsideration of the application in light of the above amendments and the following remarks is respectfully requested.

None of the original claims (1-17) have been cancelled. New claims 18-28 are added by the present amendment. Consequently, claims 1-28 are now pending for further action.

Prior Art:

The sole issue raised in the outstanding Office Action is a rejection of claims 1-17 as being unpatentable under 35 U.S.C. § 103(a) in view of the combined teachings of U.S. Patent No. 5,058,584 to Bourgeois ("Bourgeois") and U.S. Patent No. 5,358,514 to Schulman et al. ("Schulman"). For at least the following reasons, this rejection is respectfully traversed.

Independent claim 1 recites:

A method for treating a patient with angina pectoris, comprising:
providing a miniature leadless implantable stimulator with at least one electrode and with a size and shape suitable for placement of the entire stimulator adjacent to a nerve;
implanting the stimulator adjacent to at least one tissue influencing the angina pectoris of the patient, which tissue is at least one of an intercostal nerve and an intercostal nerve branch;
providing operating power to the stimulator;
using an external appliance to transmit stimulation parameters to the stimulator;
receiving the stimulation parameters at the stimulator;
generating stimulation pulses in accordance with the stimulation parameters, which pulses are generated by the stimulator;
delivering stimulation pulses via the stimulator to the at least one of the intercostal nerves and intercostal nerve branches influencing angina pectoris as a treatment for angina pectoris.
(emphasis added).

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Independent claim 9 recites:

A method for treating a patient with angina pectoris, comprising:
providing a miniature implantable stimulator with at least one electrode and with a size and shape suitable for placement of the at least one electrode adjacent to a nerve;

implanting the at least one electrode near at least one tissue influencing the angina pectoris of the patient, which tissue is at least one of an intercostal nerve and an intercostal nerve branch;

providing operating power to the stimulator;

using an external appliance to transmit stimulation parameters to the stimulator;

receiving the stimulation parameters at the stimulator;

generating stimulation pulses in accordance with the stimulation parameters, which pulses are generated by the stimulator;

delivering stimulation pulses via the stimulator and the at least one electrode to the at least one of the intercostal nerves and intercostal nerve branches influencing angina pectoris as a treatment for angina pectoris.

(emphasis added).

In contrast, the combined teachings of Bourgeois and Schulman do not teach or suggest a method that includes delivering stimulation pulses via an implanted stimulator to an intercostal nerve or intercostal nerve branch to treat angina pectoris.

Bourgeois teaches stimulation of the spinal cord within the epidural space to treat angina pectoris. (See Bourgeois, abstract). Bourgeois does not even mention the intercostal nerves, and certainly does not teach or suggest the stimulation of the intercostal nerves to treat angina pectoris.

Bourgeois is merely representative of the prior art described in Applicant's specification at, for example, paragraph 0047, which states: "The electrodes for SCS for angina pectoris are typically implanted in the epidural space of the low cervical and high thoracic spinal segments, i.e., C7, T1, and T2. ... Intermittent stimulation is generally used. Typically the device is activated episodically by the patient, in response to anginal pain; studies have found the device active only 10-15% of a given week."

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Schulman, likewise, does not teach or suggest, or even mention, stimulation of the intercostal nerves or related nerve branches.

Thus, the combination of Bourgeois and Schulman fails to teach or suggest the claimed method including delivering stimulation pulses via an implanted stimulator to an intercostal nerve or intercostal nerve branch to treat angina pectoris. "To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)." M.P.E.P. § 2143.03. Accord M.P.E.P. § 706.02(j). Consequently, the rejection of claims 1-17 based on the combined teachings of Bourgeois and Schulman should be reconsidered and withdrawn.

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Conclusion:

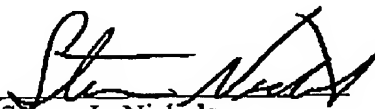
The newly added claims are thought to be patentable over the prior art of record for at least the same reasons given above with respect to the original independent claims.

Therefore, examination and allowance of the newly added claims is respectfully requested.

For the foregoing reasons, the present application is thought to be clearly in condition for allowance. Accordingly, favorable reconsideration of the application in light of these remarks is courteously solicited. If any fees are owed in connection with this paper, that have not been elsewhere authorized, authorization is hereby given to charge those fees to Deposit Account 18-0013 in the name of Rader, Fishman & Grauer PLLC. If the Examiner has any comments or suggestions which could place this application in even better form, the Examiner is requested to telephone the undersigned attorney at the number listed below.

Respectfully submitted,


DATE: 27 July 2005


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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being transmitted to the Patent and Trademark Office facsimile number 571-273-8300 on July 27, 2005. Number of Pages: 16


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